

AG Contract No.: KR05-0261TRN
ADOT ECS File No.: JPA 05-013
Project No.: TEA-080-A-(011)
Project: Bisbee Roundabout
Section: SR 80 - MP 343.7 & SR 92 - MP 355.11
TRACS No.: H6402 01L/01D/01C
Budget Source Item No.: 75603 / 75305

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF BISBEE

THIS AGREEMENT is entered into 6th May, 2005, pursuant to Arizona Revised Statutes §§ 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF BISBEE, ARIZONA acting by and through its MAYOR and CITY COUNCIL (the "CITY")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes §§ 28-401 and 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, the twelve eligible transportation enhancement provisions.

4. The City has selected such project within the boundary of the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval.

NO. 27498
Filed with the Secretary of State
Date Filed: 05/06/05

Janice K. Brewer
Secretary of State

By: Jimmy D. Greenwald

5. The State and the City are in mutual agreement to participate landscaping and maintenance of ten (10) traffic medians of varying sizes and a roundabout located at the confluence of State Route (SR) 80 at milepost (MP) 343.70 and SR 92 at MP 355.11 all within State's right-of-way, hereinafter referred as the "Project", for the safety and benefit of the traveling public. The Project includes landscaping, irrigation, pedestrian lighting and the provision of the functional and directional art form graphics indicating the north, south, east and west ("art works"). The State will be the lead agency to perform the Project and the City agrees to provide the art works on behalf of the State and be reimbursed in various work completion stages defined under Section II.2.a, the total reimbursement shall not to exceed \$18,900.00. In addition, the City will be responsible for the maintenance of the Project including art works, landscaping, necessary water services, irrigation, pedestrian lighting system and electric energy costs for lighting. The responsibility of each of the parties is defined in this Agreement under Section II. Scope of Work.

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*Total Estimated Cost includes art works provided by the City @ \$18,900.00

***\$335,506.00**

Federal Aid Funds @ 94.3%

\$316,382.00

State Funds @ 5.7%

\$ 19,124.00

*(Includes 15% CE and project contingencies)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. After execution of this Agreement and upon receipt and approval of detailed invoices from the City, reimburse the City for the art works according to following schedules. The total reimbursement amount shall not exceed \$18,900.00:

- i. Thirty percent (30%) of \$18,900.00 at 30% art works completion stage;
- ii. Forty percent (40%) of \$ 18,900.00 at 70% art works completion stage; and
- iii. Thirty percent (30%) of \$ 18,900.00 at 100% art works completion stage.

b. Prepare to State standards, design plan, specifications and estimates for the Project and submit them to the City for comment as appropriate. Construct the Project using the State and Federal funds.

c. Submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding.

d. Construct the Project approved by FHWA, if such funds are available for construction. With the aid and consent of the FHWA, proceed to advertise for, receive and open bids, and subject to the concurrence of the FHWA, enter into a contract with a firm to whom the award is made for the construction of the Project. Such project is to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

e. Enter into a Project Agreement with FHWA covering the work encompassed in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs.

f. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

g. Ensure that all of the federal aid funds are spent on portions of the Project that will be opened to the public, free of charge during normal business hours. No federal funds shall be used for any portion of the Project that is not opened to the public.

h. Upon completion of the Project and after receipt of the City's request(s), grant the City an "Encroachment Permit" through State's Safford District's Douglas Maintenance Office to allow the City rights-of-entry onto the State's right-of-way for all planned maintenance works of the Project.

2. The City shall:

a. After execution of this Agreement, submit detailed invoices according to following schedules to the State using Arizona Department of Transportation (ADOT) Progress Payment Report Form as attached for the functional and directional art form graphics indicating the north, south, east and west ("art works") of the Project and the total reimbursement amount shall not exceed \$18,900.00. The detailed invoices shall include proof to show that the work has been performed pursuant to completion of each invoicing stage, proof to show that the cost(s) has been paid and other related supporting documentation as appropriate

- i. Thirty percent (30%) of \$18,900.00 at 30% art works completion stage;
- ii. Forty percent (40%) of \$ 18,900.00 at 70% art works completion stage; and
- iii. Thirty percent (30%) of \$ 18,900.00 at 100% art works completion stage

b. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

c. Be responsible to provide the art works.

d. Furnish all water for landscape installation during the construction phase and all water thereafter necessary to properly maintain the landscape, all at City's expense.

e. At the conclusion of the contractor's maintenance and warranty period referred to in the construction contract as Landscape Establishment, assume responsibility for maintenance of the Project, at its own cost and as an annual item in its budget for perpetual and proper maintenance of all landscape, including, but not limited to landscaping, the irrigation system, including all testing, adjusting, repairing, and operation of the irrigation system.

f. Landscape maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, and established at the completion of the Project.

g. Be responsible to conduct street sweeping operations and litter control activities as needed, on and around the roundabout, including landscaped areas, pavement, and sidewalks.

h. Be responsible to conduct maintenance of the pedestrian lighting system and all associated electrical energy costs.

i. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through traffic. All traffic control shall adhere to the requirements of the Arizona Department of Transportation's "Manual on Uniform Traffic Control Devices".

j. Be responsible to submit request(s) to the State and obtain for any necessary "Encroachment Permit" through the State's Safford District's Douglas Maintenance Office allowing the City rights-of-entry onto the State's right-of-way for all planned maintenance works of the Project.

III. MISCELLANEOUS PROVISIONS

1. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by the City for the vicarious liability of the State as a result of entering into this Agreement. Each party to this Agreement is responsible for its own negligence.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the State, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement.

3. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said Project and related deposits or reimbursement, except any provisions for maintenance, electric energy and water provided by the City shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the Project construction contract, upon thirty-days (30) written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said Project.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. **Non-Availability of Funds** Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

City of Bisbee
City Manager
118 Arizona Street
Bisbee, Arizona 85603

11. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF BISBEE

By 
RONALD OERTLE
Mayor

STATE OF ARIZONA
Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

ATTEST

By 
HELEN I. LEHR
City Clerk

AGENDA

AGENDA OF THE REGULAR SESSION OF THE MAYOR AND COUNCIL OF THE
CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA TO BE HELD ON
TUESDAY, MAY 3, 2005, AT 7:00 PM IN THE BISBEE MUNICIPAL BUILDING,
118 ARIZONA STREET, BISBEE, ARIZONA.

THE MEETING CALLED TO ORDER BY _____ AT _____ PM.

ROLL CALL

COUNCIL

Councilmember Edward "Maynard" Kreps, Ward I
Councilmember Bennie Scott, Ward III
Councilmember Luche Giacomino, Ward II
Mayor Ronald Oertle
Councilmember Anna Cline, Ward III
Councilmember Robert Kasun, Ward II
Councilmember Jack Porter, Ward I

STAFF

Robert Yandow, City Manager
John Charley, Assistant City Manager
Helen I. Lehr, City Clerk
Karen Asquith, Finance Director
Jim Elkins, Chief of Police
Jack Earnest, Fire Chief
Russ McConnell, Public Works Director
Janet Ball, Librarian
Donna Harris, Community Development Director

CITY ATTORNEY

John MacKinnon, City Attorney

INVOCATION: A Moment of Silence

PLEDGE OF ALLEGIANCE

MAYOR'S PROCLAMATIONS AND ANNOUNCEMENTS:

A Brief Summary of Current Events

MINUTES OF THE REGULAR SESSION

APRIL 19, 2005

AYES: Councilmembers Kreps, Scott, Giacomino, Cline, Kasun and Porter and Mayor Oertle.
NAYS: 0 MOTION PASSED: UNANIMOUS

12. Discussion and Possible Approval of an Intergovernmental Agreement with the Arizona Department of Transportation regarding the Transportation Enhancement Grant for the Beautification of the Bisbee Roundabout/Traffic Circle.
Donna Harris, Community Development Director

Ms. Harris briefly explained the history of the project. She also explained the IGA with ADOT and said that no city money would be spent for this project. She said that the IGA did require that the city be responsible for the lighting and the maintenance of the landscaping once installed.

Councilmember Giacomino inquired if a large tree was to be installed. Ms. Harris said that ADOT would like to keep the large tree in the middle opposed to three trees.

Councilmember Giacomino said that the Council had received a letter from Margaret Franzen requesting that a Certification of Safety be secured. Ms. Harris said that she had tried to locate information about such certification and would continue to do so.

Mayor Oertle inquired about the type of vegetation to be used in the circle. Ms. Harris explained various drought resistant vegetation that would be used and the watering system.

Mayor Oertle inquired how far back from the curb the vegetation and public art pieces would be set. Ms. Harris explained that everything would be set back at least forty-five feet from the curb.

Mayor Oertle asked who owned the traffic circle land. Ms. Harris said that ADOT owns the land and that the city would not be expending any funds on this project.

MOTION: Councilmember Kreps moved to approve the IGA with Arizona Department of Transportation regarding the Transportation Enhancement Grant for the beautification of the Bisbee Roundabout/Traffic Circle. SECOND: Councilmember Cline

Mayor Oertle requested a Roll Call Vote.

ROLL CALL VOTE:

AYES: Councilmembers Kreps, Scott, Giacomino, Cline, Kasun and Porter and Mayor Oertle.
NAYS: 0 MOTION PASSED: UNANIMOUS

13. Discussion and Possible Approval of Resolution R-05-08 to Authorize the Mayor to Sign an Intergovernmental Agreement with the Housing Authority of Cochise County.
Donna Harris, Community Development Director


Ms. Harris explained that Resolution R-05-08 authorizes the Mayor to sign an IGA with the Housing Authority of Cochise County as part of the CDBG project the Council selected. She said that the city will not expend any funds as part of this IGA. Ms. Harris said that sewer lines will be replaced in 48 units in low to moderate income homes, up to \$1,200 per line.

MOTION: Councilmember Giacomino moved to approve Resolution R-05-08 authorizing the Mayor to sign an IGA with the Housing Authority of Cochise County to implement the CDBG fund housing rehabilitation sewer connection project. SECOND: Councilmember Cline

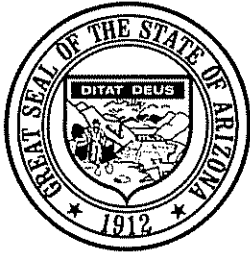
APPROVAL OF THE CITY OF BISBEE ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF BISBEE, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 21st day of April, 2005.



City Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646

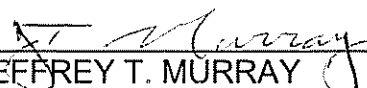
**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR05-0261TRN (**JPA 05-013**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED May 17, 2005.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section

JTM:dgr
Attachment
903576